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THIS ORDER RELATES TO A
HEARING HELD ON
AUGUST 17, 2020

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

JOHN FRANCIS VIVENZIO
dba VIVENZIO ASSOCIATES, LLC
dba INTELINTIX SOFTWARE,

Debtor.

Chapter 13
Case No. 819-71697-AST

ORDER DISMISSING CASE

UPON the April 19, 2019 written application (the "Motion to Dismiss") of Marianne DeRosa, Chapter 13 Trustee, (the "Trustee") seeking entry of an Order dismissing the instant Chapter 13 case pursuant to 11 U.S.C. §1307(c) and due notice of the aforesaid application having been given to all necessary parties; and

WHEREAS, on August 17, 2020, the Court held an evidentiary hearing (the "Evidentiary Hearing") regarding, among other things, the feasibility of the Debtor's proposed Chapter 13 Plan dated July 3, 2019 (the "Third Amended Plan") and the Trustee's Motion to Dismiss; and

WHEREAS, at the Evidentiary Hearing, Nathan Kaufman, Esq. appeared on behalf of the Trustee in support of the Motion to Dismiss, Debtor appeared in opposition, and Henry DiStefano, Esq. and Nik Fox appeared on behalf of Selene Finance, LP; and

WHEREAS, the Third Amended Plan provides for monthly payments of \$2,552 for 12 months, then \$3,152 for 18 months, then \$10,202 for 6 months, and then \$22,852 for the last 24 months of the 60 month plan period; and

WHEREAS, the Third Amended Plan is speculative on its face, in that future increases to Debtor's household income would be necessary for Debtor to afford to make all payments under the Third Amended Plan as required pursuant to 11 U.S.C. §1325(a)(6); and

WHEREAS, at the Evidentiary Hearing, the Debtor did not offer any testimony or documentary evidence with respect to the feasibility of the Third Amended Plan; and

WHEREAS, as the proponent of the Third Amended Plan, Debtor failed to meet the burden of proof to demonstrate the Third Amended Plan is feasible and otherwise satisfies the requirements of 11 U.S.C. §1325(a); and

WHEREAS, the Third Amended Plan provides for \$46,384 in pre-confirmation payments to the Chapter 13 Trustee through August 2020, the Debtor had paid \$35,470.50 to the Chapter 13 Trustee as of August 17, 2020 and was \$10,913.50 in arrears under the Third Amended Plan, and the Debtor therefore failed to demonstrate the ability to make all payments under the Third Amended Plan as required pursuant to 11 U.S.C. §1325(a)(6); and

WHEREAS, the Third Amended Plan fails to comply with 11 U.S.C. §1325(a)(5)(B)(iii)(I) in that it provides for periodic payments to a secured creditor that are not in equal monthly amounts; and

WHEREAS, each of the foregoing constitutes cause for dismissal of a Chapter 13 case; and

WHEREAS, based upon the findings of fact and conclusions of law as stated on the record of the Evidentiary Hearing, cause exists to dismiss this case pursuant to 11 U.S.C. §1307(c); it is accordingly

ORDERED, that the instant Chapter 13 case be dismissed pursuant to 11 U.S.C. §1307(c) of the Bankruptcy Code.

Dated: August 25, 2020
Central Islip, New York





Alan S. Trust
United States Bankruptcy Judge